



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 2, 1993

Mr. James M. Kuboviak  
Brazos County Attorney  
300 East 26th Street, Suite 310  
Bryan, Texas 77803

OR93-405

Dear Mr. Kuboviak:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20736.

The Brazos County Attorney's Office (the "county attorney") has received a request for "a copy of the complete file regarding an incident that occurred on January 1, 1991," during which "Ahmad Hussein Aldirawi was arrested and charges of aggravated assault of a peace officer, resisting arrest and public intoxication were filed . . . [and] subsequently dismissed." You have submitted the requested information to us for review and seek to withhold the requested information under sections 3(a)(3), and 3(a)(8) of the Open Records Act.

Section 3(a)(3) excepts from required public disclosure

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). Section 3(e) provides that for purposes of section 3(a)(3), "the state . . . is considered to be a party to litigation of a criminal nature until the applicable statute of limitations has expired." V.T.C.S. art. 6252-17a, § 3(e); *see also* Open Records Decision Nos. 469 (1987); 433 (1986). Section 3(e), however, does not relieve the governmental body from demonstrating the general applicability of section 3(a)(3). *See*

Open Records Decision No. 518 (1989). In addition, section 3(a)(3) applies only to pending or reasonably anticipated litigation to which the governmental body claiming the exception is a party. See Open Records Decision No. 392 (1983).

We understand that the charges against Mr. Aldirawi have been dismissed. While you indicate that litigation in this matter is pending, you have provided us with no information demonstrating that you are party to the litigation, nor have you demonstrated that other litigation to which the requested information relates is pending or reasonably anticipated. We therefore have no basis on which to conclude that the requested information relates to pending or anticipated litigation. Accordingly, the requested information may not be withheld from required public disclosure under section 3(a)(3) of the Open Records Act.

You also claim that some of the requested information may be withheld from required public disclosure under section 3(a)(8), which excepts

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

When the "law enforcement" exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)).


While you claim that the requested information is excepted under section 3(a)(8), you do not explain how its release would unduly interfere with law enforcement. Nor does the information provide an explanation on its face. We conclude, therefore, that the requested information may not be withheld from required public disclosure under section 3(a)(8) of the Open Records Act.

Some of the requested information, however, may be excepted under section 3(a)(1), which excepts from disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The information submitted to us for review appears to include criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") and the Texas Crime Information Center ("TCIC"). Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual

law with respect to CHRI it generates. *Id.* We conclude, therefore, that if the CHRI data was generated by the federal government or another state, it may not be made available to the public by the district attorney. See Open Records Decision No. 565. CHRI information generated within the state of Texas and TCIC files must be withheld from required public disclosure under section 3(a)(1) in conjunction with the common law privacy doctrine. See Open Records Decision Nos. 565 (1990); 216 (1978); *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We note, however, that the subject of CHRI generated within the State of Texas and TCIC files has a special right of access to such information pursuant to section 3B of the Open Records Act. The requested information must be released with the exception of TCIC documents which we have marked accordingly.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Opinion Committee

LRD/GCK/jmn

Ref.: ID# 20736

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